

A. G. Contract No. KR98 0039TRN
ADOT ECS File: JPA 98-04
Project: STP-000-6(119)P
TRACS: SR135 01C
Section: County 230 @ BN&SFRR
AAR/DOT No. 025-011-J

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

THIS AGREEMENT is entered into 11 AUGUST, 1999,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between
the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION
(the "State") and the OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION acting by and
through its CONTRACTING OFFICER (the "ONHIR").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334
to enter into this agreement and has by resolution, a copy of which is attached hereto and
made a part hereof, resolved to enter into this agreement and has delegated to the
undersigned the ONHIR to execute this agreement on behalf of the State.

2. The ONHIR is empowered by PL 93-531(25 USC 640-d) to enter into this
agreement and, resolved to enter into this agreement and has authorized the undersigned to
execute this agreement on behalf of the ONHIR.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes
Section 40-337 to participate in the funding of this project, and has authorized funds for this
project.

4. Congress has authorized appropriations for the erection of automatic warning
signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

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NO 23459
Filed with the Secretary of State
Date Filed: 08/11/99

Petrey Bayless
Secretary of State

B Vicky J. Shoemaker

5. Such project within the boundary of the ONHIR has been selected by the ONHIR; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the ONHIR by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows:
Upgrade Railroad Crossing

Preliminary and Construction Engineering	\$ 2,000.00
Upgrade Existing Roundels from 8" diameter to 12" diameter (by railroad forces)	\$ 2,639.00
Total Project	\$ 4,639.00
Federal Aid Funds @ 94.3% of \$4,639.00	\$ 4,375.00
AZ Corp. Comm. Funds @ 5.7% of \$4,639.00	\$ 264.00
ONHIR Funds	\$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the ONHIR's deposit unless and until so authorized in writing by the ONHIR.

2. The ONHIR shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the ONHIR shall remove from the ONHIR right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The ONHIR shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the ONHIR right of way. In the event of any unauthorized encroachment or improper use, the ONHIR shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the ONHIR.

5. Upon completion of construction, the ONHIR shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The ONHIR shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the ONHIR.

7. By such regulation as it may by ordinance provide, the ONHIR shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The ONHIR, in regard to the ONHIR's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the ONHIR for the benefit of the State in no way acts as a waiver by the ONHIR for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the ONHIR and that the ONHIR hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the ONHIR, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the ONHIR, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the ONHIR agrees to furnish and provide the State with ONHIR funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. Applicable laws of the State and Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State and Federal government, and acceptable to the State and Federal government. Such process will include a provision for arbitration.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Room 222E, Mail Drop 616E
Phoenix, AZ 85007

Office of Navajo and Hopi Indian Relocation
Land Use Manager
PO Box KK
Flagstaff, AZ 86002

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

OFFICE OF NAVAJO AND HOPI
INDIAN RELOCATION

By Tina Vane

STATE OF ARIZONA
Department of Transportation

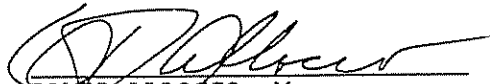
By Peter L. Enos
PETER L. ENO
Contract Administrator

6jan

RESOLUTION

BE IT RESOLVED on this 6th day of January 1998, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Navajo/Hopi Relocation Office for the purpose of defining responsibilities for constructing railroad crossing improvements on County Road 230 at the BN&SFRR.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


DAVID ALLOCCO, Manager
Engineering Technical Group
for Larry S. Bonine, Director

JPA 98-04

DETERMINATION

Arizona Contract No. JPA 98-04, which is an agreement between public agencies; to wit; the STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the UNITED STATES OF AMERICA, OFFICE OF NAVAJO AND HOPI RELOCATION, has been reviewed by the undersigned for the United States who has determined that it is in the proper form and within the powers and authority granted to the United States.

No opinion is expressed as to the authority of the State of Arizona to enter into said agreement.

DATED this 18th day of June, 1999.

THE UNITED STATES OF AMERICA

By Paul Tessler
Legal Counsel PAUL TESSLER
OFFICE OF NAVAJO AND Hopi
INDIAN RELOCATION



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO
ATTORNEY GENERAL

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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR98-0039TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED August 5, 1999.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/81425

Enc.